

### **REMARKS**

This responds to the Office Action dated November 3, 2006. Claims 1-2, 4, 6-9, 11-16, 19-21, 38-39, 50-52 are amended. Claims 18, 22-37, and 41-49 have been cancelled. No claims have been added. As a result, claims 1-17, 19-21, 38-40, and 50-52 are now pending in this patent application.

#### **§103 Rejection of the Claims**

1. Claims 1-10 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Russo et al. (U.S. Patent No. 5,807,336) in view of Naiki (U.S. Patent No. 7,039,426).

##### **Concerning claims 1-10:**

Applicant has amended claim 1 to overcome this rejection. Claim 1 is directed toward transmitting a jamming signal from an external blocking device, wherein the jamming signal is selected to target a particular frequency range selected for use in the communications between the implantable medical device and the external communications device. Support for this amendment is found, for example, in originally-filed claim 3 as well as in the specification.

The Office Action admits that “Russo does not expressly teach jamming the communication” between the medical device and the external device, as recited or incorporated in these claims. Applicant agrees, and further notes that Russo apparently does not even disclose any “implantable” medical device with communication capability, as similarly presently recited or incorporated in claims 1-10.

Instead, the Office Action attempts to rely on Naiki to establish this claim element that is missing in Russo. The Office Action asserts that “Naiki teaches apparatus that transmits signal which prohibits or automatic turn off or disable (jam) any data transmission (see col. 7 lines 1-59, column 8, 54-61 and figure 2 and 4.)” (See Office Action at 3.) However, Applicant can find nothing in Naiki that appears to disclose, teach, or even suggest transmitting a jamming signal from an external blocking device, wherein the jamming signal is selected to target a particular frequency range selected for use in the communications between the implantable medical device and the external communications device, as presently recited or incorporated in claims 1-10. Instead, Naiki makes clear that the prohibiting signal is used to inhibit portable information apparatuses (e.g., mobile telephones, etc.) in the vicinity of a medical apparatus or

airplane that is susceptible to electromagnetic waves from the portable information device, rather than to “jam the communications between the implantable medical device and the external communications device,” as presently similarly recited or incorporated in these claims. (*See* Naiki at col. 8, lines 53-68.) Therefore, Russo and/or Naiki fail to disclose all elements recited or incorporated in these claims.

Thus, because Russo and/or Naiki fail to disclose all elements of these claims, Applicant respectfully submits that no *prima facie* case of obviousness presently exists with respect to these claims. Accordingly, Applicant respectfully requests withdrawal of this basis of rejection of these claims.

2. Claims 11-19, 22, 35-38, 40-42, 46 and 48-52 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Russo et al. (U.S. Patent No. 5,807,336) in view of Naiki (U.S. Patent No. 7,039,426) and further in view of Warkentin et al. (U.S. Patent No. 6,471,645).

Concerning claims 11-18:

Applicant cannot find in Russo, Naiki, and/or Warkentin any disclosure, teaching, or suggestion of receiving an external input that is configured to instruct an external communications device to cease sending a solicitation for data to the implantable medical device, as presently recited or incorporated in claims 11-18. Applicant notes that actually instructing an external communications device to cease sending a solicitation for data to the implantable medical device is different from sending a wireless jamming signal that jams communications between the implantable medical device and the external communications device. Moreover, actually instructing an external communications device to cease sending a solicitation for data to the implantable medical device is different from preventing the implantable medical device from receiving such a solicitation for data by using a jamming signal to interfere with communications.

Thus, because the cited references fail to disclose all elements of these claims, Applicant respectfully submits that no *prima facie* case of obviousness presently exists with respect to these claims. Accordingly, Applicant respectfully requests withdrawal of this basis of rejection of these claims.

Concerning claims 19, 22, 38-40 and 50:

Claim 22 is cancelled, thereby mooted the rejection of claim 22. Claims 19 38-40, and 50 similarly recite or incorporate receiving a communications-inhibiting input at an implantable medical device through a “physiological” sensor, which Applicant respectfully submits is not disclosed, taught, or even suggested by Russo, Naiki, or Warkentin. Accordingly, because the cited references fail to disclose all elements of claims 19, 38-40, and 50, Applicant respectfully submits that no *prima facie* case of obviousness presently exists with respect to these claims. Accordingly, Applicant respectfully requests withdrawal of this basis of rejection of these claims.

Concerning claims 35-37 and 41-42:

Claims 36-37 and 41-42 are cancelled, thereby mooted the rejection of these claims.

Concerning claims 51-52:

These claims depend directly or indirectly from claim 1 (which was not made part of this rejection) and are believed patentable for the reasons discussed above with respect to claim 1. Accordingly, Applicant respectfully requests withdrawal of this rejection of claims 51-52.

3. Claims 20-21 and 39 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Russo et al. (U.S. Patent No. 5,807,336) and Naiki (U.S. Patent No. 7,039,426) and Warkentin et al. (U.S. Patent No. 6,471,645) as applied to claims 1-19 above, and further in view of Von Arx et al. (U.S. Patent No. 6,985,773).

As already stated in Applicant’s previous response—but left unaddressed by the present Office Action—Applicant’s traversal is made on the grounds that Von Arx et al. is disqualified by the American Inventors Protection Act (AIPA) of 1999 from being used as a reference against the present patent application under 35 U.S.C. § 102(e)/103. Applicant declares that, to the best of Applicant’s knowledge, at the time the present invention was made, the present patent application and the application for Von Arx et al. U.S. Patent 6,985,773 were owned by the same entity, that is, Cardiac Pacemakers, Inc. The application for the Von Arx et al. patent was apparently filed on Feb. 7, 2000, and did not publish until August 7, 2003, and did not issue as a patent until January 10, 2006. By contrast, Applicant notes that the present patent application was filed on June 23, 2003, before the publication date of the application for the Von Arx et al.

patent. Applicant believes, therefore, that Von Arx et al. is disqualified as a reference for the purpose of 102(e)/103(a) under 35 U.S.C. 103(c). Accordingly, Applicant respectfully requests withdrawal of this basis of rejection of claims 20-21, and 39 of the present patent application insofar as it relies on the Von Arx et al. reference.

Moreover, because this grounds for disqualification of the rejection was left unaddressed in the most recent Office Action, Applicant respectfully requests that any subsequent Office Action be made non-final to fully and fairly afford the Applicant an opportunity to respond to any asserted continued basis of this rejection.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6951 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.


Respectfully submitted,

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Date March 5, 2007

By   
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**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 5 day of March 2007.

Name

Signature